

*This pamphlet has been prepared as a public service to provide an understanding of the duties and procedures of the Franklin County Probate Court regarding decedent's estate administration. It is intended to be an overview only and should not be considered as a legal reference. Laws pertaining to these topics may change. Legal advice should be obtained from an attorney.*

## **WHAT IS ESTATE ADMINISTRATION?**

When an individual dies, certain assets of the decedent (non-probate) may be transferred by contract, such as joint and survivorship property, payable on death accounts, transfer on death property, and most life insurance and retirement benefits. Other assets (probate) may be transferred through proceedings in Probate Court. Most persons die owning both probate and non-probate assets, all of which generally require some type of documentation to complete the transfer. There are advantages and disadvantages in using non-probate or probate proceedings. It is prudent to consult an attorney to determine the best manner in which to hold one's assets.

It is the Probate Court's responsibility to ensure the probate assets are collected, maintained, and distributed among the decedent's heirs, beneficiaries, and/or creditors according to the direction of the decedent as expressed through a will and the laws of Ohio. This process is known as the administration of a decedent's estate.

## **WHAT ARE THE DUTIES OF THE FIDUCIARY?**

After the death of an individual, an estate may be opened by any interested person filing an application to administer the estate. The application is filed in the county in which the decedent resided. The Court will appoint an estate representative, called a fiduciary, and issue Letters of Authority. The fiduciary is appointed by the Court according to the decedent's will or statutory guidelines. If nominated by will, the fiduciary is an executor. If there is no will, the fiduciary is an administrator. It is the responsibility of the fiduciary to administer the decedent's estate and to account to the Court for that administration. A fiduciary who fails to perform the statutory duties is subject to removal by the Court. A bond may be required of the fiduciary to protect the beneficiaries and creditors of the estate and to insure proper administration.

## **HOW ARE FIDUCIARY FEES DETERMINED?**

Ohio law sets forth fees for a fiduciary of an estate. Those fees are:

- 4% of the first \$100,000 of personal property, income, and proceeds of real estate sold
- 3% of the next \$300,000
- 2% of the balance
- 1% of the value of real estate not sold
- 1% of all property that is not subject to probate administration and that is includable for purposes of computing the Ohio estate tax, except joint and survivorship property.

The fiduciary may waive the fee. When a fee is taken it must be included on the fiduciary's personal income tax return.

## **DOES A FIDUCIARY NEED AN ATTORNEY?**

Due to the complexity of the law and the legal problems that are involved in estate administration, the Court strongly recommends that all fiduciaries seek legal counsel. Good legal advice and guidance can expedite the probate process, prevent costly errors, and protect against the fiduciary being sued.

## **HOW ARE ATTORNEY FEES DETERMINED?**

There is no minimum fee or percentage fee for the attorney. In Franklin County the fee is primarily a matter between the fiduciary, the attorney, and others affected by the fee. If the parties do not agree, the reasonableness of the fee is determined by the Court.

Factors considered by the Court include the time involved, the difficulty of the issues, the experience and ability of the attorney, the time limitations imposed by the client, and the amount of litigation which may be involved.

Attorney fees should not be paid until the final account is prepared, unless otherwise ordered by the Court for good cause shown.

## **HOW LONG SHOULD IT TAKE TO ADMINISTER AN ESTATE?**

Most estates should be finalized within 6 months of the date of the appointment of the fiduciary. However, where family, creditor, tax, or other issues or disputes exist, the estate administration may take longer to conclude.

## **WHAT ARE THE STEPS OF AN ESTATE ADMINISTRATION?**

Pursuant to statutes and local Court rules, the basic steps of administration are as follows:

- \* Application for authority to administer the estate and admit the will to probate if one exists;
- \* Appointment of fiduciary;
- \* Gathering assets and obtaining appraisals as required;
- \* Filing the inventory in a timely manner;
- \* Payment of creditors;
- \* Filing of estate and income tax returns and payment of taxes, if any;
- \* Distribution of remaining assets to beneficiaries;
- \* Closing the estate by filing a final account or certificate of termination in a timely manner.

## **WHAT IS A RELEASE FROM ADMINISTRATION?**

If the decedent's probate estate consists of property of a gross value less than \$35,000, the estate may be released from administration. When the surviving spouse is the sole beneficiary, an estate of a gross value up to \$100,000 may be released from administration. The release from administration is less complicated and may be completed more quickly than a full administration.

Also available in small estates is a summary release

from administration. The summary release is used for reimbursement of the funeral and burial expenses up to \$2000. If there is a surviving spouse who is entitled to the entire family allowance, the surviving spouse may use the summary release for estates up to \$40,000 plus reimbursement of funeral and burial expenses up to \$2000.

## **DOES REDUCING PROBATE ASSETS REDUCE ESTATE TAXES?**

Avoiding probate does not mean avoiding estate taxes. Only estates which have a net value in excess of \$338,000 will be subject to Ohio estate tax.

It is a common misconception that only probate assets are subject to estate taxes. Non-probate assets such as joint and survivorship assets and trust assets must also be included in the decedent's estate tax return. In estate tax returns, certain items may be deducted such as debts, administration expenses, and charitable gifts. In addition, other deductions and exemptions may be available. Due to increases in exemptions, in excess of 78% of estates will not pay Ohio estate taxes. In estates exceeding \$1,000,000, one should consult a qualified tax advisor concerning Federal estate taxes.

## **MAY FUNDS BE WITHDRAWN FROM BANK ACCOUNTS?**

Accounts registered in the decedent's name alone may only be withdrawn by a Court appointed fiduciary or by Court Order. Survivorship, payable on death accounts, and transfer on death accounts may be withdrawn by the survivor. A tax release is required when an account exceeds \$25,000. Tax releases are obtained from the County Auditor.

## **MAY ITEMS BE REMOVED FROM A SAFE DEPOSIT BOX?**

Effective January 1, 2001, the Tax Commissioner has ruled that safe deposit boxes need not be audited after the death of the owner for estate tax purposes. However, financial institutions may require a death certificate and a Letter of Authority from the Probate Court prior to authorizing another individual to enter the box.

## **WHAT IF THERE IS NO WILL?**

If the decedent had no will, the estate is administered in a similar manner as if a will had been probated. In completing the estate administration, the decedent's property is distributed according to the law of descent and distribution which divides the estate between the surviving spouse and the next of kin. If the next of kin are unknown, the filing of a civil action to determine heirship may be required.

## **WHAT IF THE WILL IS UNCLEAR?**

If the will is unclear, a civil action to construe the will may be filed in the Probate Court. A hearing shall be held to determine the intent of the testator.

## MAY ONE OBJECT TO THE WILL?

Any interested party may file a civil action to contest the validity of a will. That party must establish by clear and convincing evidence that the testator was mentally incompetent to write a will or was subject to undue influence in the preparation of the will. A will contest must be filed within 3 months after the filing of a certificate that all interested persons were given or waived notice of the admission of the will to probate.

## MUST A WILL BE PRESENTED TO THE COURT?

A will should be presented to the Probate Court as soon as practical after the death of the decedent, even if there are no known probate assets. A person who withholds a will intentionally, negligently, or without reasonable cause may lose the right to inherit. An action may be filed to require the production of the will any time after the death of the decedent, and failure to produce a will upon Court Order may result in penalties for contempt of Court.

## WHAT PROPERTY MUST BE APPRAISED?

Property must be appraised if the value is not readily ascertainable. Examples would include real estate, closely held corporations, and partnerships. An appraiser will be appointed through the Probate Court to value such items for estate purposes.

## HOW IS A PROBLEM WITH AN ESTATE BROUGHT TO THE ATTENTION OF THE COURT?

Problems with an estate may be brought to the Court's attention by an interested party through the filing of pleadings. The matter may be set for hearing and notice shall be given to all interested parties.

## HOW ARE COURT COSTS DETERMINED?

Court costs are determined by statute. The total cost for administering an estate will vary depending on the type of actions and pleadings filed. An estate will require an initial minimum deposit of \$125. Court costs for an estate are usually less than \$200.

## LEGAL PRACTICE IN THE PROBATE COURT

Legal practice in the Probate Court is restricted by law to attorneys who are licensed by the Supreme Court of Ohio. If an individual wishes to handle his or her own case, that person may do so, however, such person may not represent others. Due to the complexity of the law and desire to avoid costly errors, most individuals who have matters before the Court are represented by an attorney. Court employees are prohibited by statute from practicing law and cannot give legal advice.

08/02



Dear Franklin County Resident:

*The Policy of the Franklin County Probate Court is to fulfill its duties as efficiently and effectively as possible. I sincerely hope you find this brochure helpful and your experience with our Court pleasant and successful.*

A handwritten signature in dark ink, reading "Lawrence A. Belskis".

**LAWRENCE A. BELSKIS, JUDGE**

FRANKLIN COUNTY  
COURT OF COMMON PLEAS  
PROBATE DIVISION

Franklin County Courthouse  
373 South High Street  
22nd Floor  
Columbus, Ohio 43215-6311

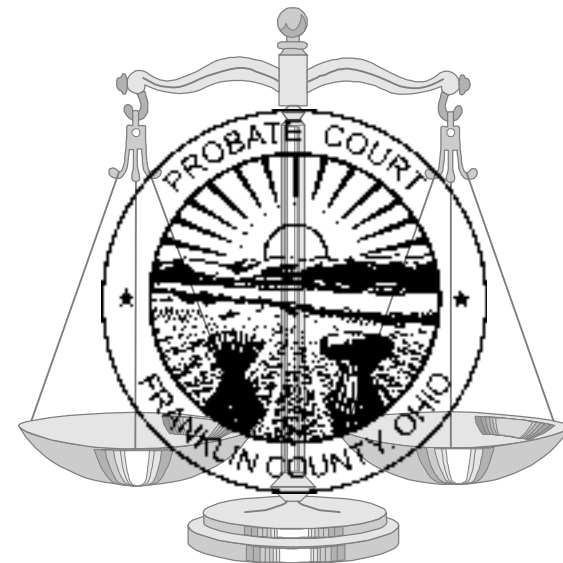
## HOURS

Monday — Friday: - 8:00 A.M. to 5:00 P.M.  
(Cashier closes at 4:30 P.M.)

GENERAL INFORMATION - 614-462-3894

For additional information please see our  
Website: [www.co.franklin.oh.us/probate](http://www.co.franklin.oh.us/probate)

# DECEDENT'S ESTATE ADMINISTRATION



Prepared and  
issued as a  
public service

**JUDGE LAWRENCE A. BELSKIS**

**FRANKLIN COUNTY  
PROBATE COURT**